

Remarks

The Office Action states that Applicant's previous arguments are considered moot in light of the new grounds of rejection (Office Action, page 26, lines 1-3). However, the rejections to which the previous arguments applied have been essentially maintained. Therefore, Applicant submits that Applicant's previous arguments should have been considered. With all respect, the Examiner has simply not addressed the fact that Applicant has solved a long-standing environmental problem which has plagued the industry for years. Given this background, Applicant respectfully submits that the Examiner has not addressed the issue why it would be obvious to combine the two basic patents (Carmody and Thomason). As well, given this background, and given that each of these patents is directed to solving different problems, the Examiner has not addressed why it would be obvious to combine these patents. Moreover, the Examiner has not addressed previous amendments made by Applicant which specify elements not shown by Carmody and Thomason, even when taken in combination. Accordingly, to the extent the claims are again rejected, Applicant respectfully requests an Interview prior to any Final Office Action because Applicant does not understand how the previously made rejections can be maintained in light of Applicant's previous remarks and amendments.

Claim Rejections - 35 U.S.C. § 112

Claims 8, 9, 29 and 61 stand rejected under 35 U.S.C. 112 as being indefinite. Claims 8 and 9 lacked antecedent basis which Applicant has corrected. Claims 29 utilized the word "may" which has been replaced.

Claim Rejections - 35 U.S.C. §101

Claims 1-3, 10, 75-82 and 84-88 stand rejected as being non-statutory subject matter. As explained below, the claims as amended now fall squarely into the safe harbor provision for statutory matter. Therefore, Applicant's amended claims are *per se* statutory matter.

Use of Technology

As best understood, the Examiner believes that the above-listed claims indicate "no technology whatsoever." (see Office Action page 5, lines 3-4). Applicant respectfully submits that Applicant's system as described by the claim terminology for preventing environmental problems involving tens of thousands of wastewater treatment systems would be difficult or impossible to implement without technology. Nonetheless, Applicant has amended the claims to specifically recite electronically implemented steps. Electronically implemented steps clearly require technology operable for controlling the flow of electricity, e.g., electrons. Accordingly, Applicant believes that the amendments obviate any basis for the rejection that the claims do not indicate technology.

Useful, concrete, and tangible result

The Examiner cites MPEP 2106, which describes the process of analyzing patentable subject matter in computer related inventions. According to MPEP 2106 (A), the very first step in analyzing patentable subject matter in computer related inventions is to identify and understand "any practical application asserted for the invention." "An applicant may assert more than one practical application, but only one is necessary to satisfy the utility requirement." MPEP 2106 (A).

"The claimed invention as a whole must produce a "useful, concrete, and tangible result."

State Street Bank and Trust Co v Signature Financial Group, 149 F.3d 1368, 1373, 47 USPW2d 1596, 1601-02 (Fed. Cir. 1998). As a guideline in interpreting the meaning of “useful, concrete, and tangible result” M.P.E.P. 2106 (A) provides the following examples which illustrate claimed inventions that have a practical application:

“Claims drawn to a long-distance telephone billing process containing mathematical algorithms were held to be directed to patentable subject matter because the ‘claimed process applies the Boolean principle to produce a useful, concrete, tangible result without pre-empting other uses of the mathematical principle.’” *AT&T Corp v Excel Communications, Inc.*, 172 F3d 1352, 1358, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999).

“Transformation of data, representing discrete dollar amounts, by a machine and through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces ‘a useful, concrete, and tangible result’ -- a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.” *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601.

Applicant respectfully submits that even a cursory reading of the application will show that the present invention is used to insure correct operation of a plurality of wastewater treatment systems. The “useful, concrete, and tangible result” is that wastewater is treated to thereby avoid endangering the environment. This a useful, concrete, and tangible result that actually affects all of us.

A more specific benefit of the present invention, not shown or even mentioned in any of the cited prior art, and which solves a problem that has long-plagued wastewater regulatory agencies and

which is not solved by the cited prior art, is the problem of service companies that regularly falsify routine inspection reports concerning wastewater treatment systems in order to obtain payment for routine inspection work never completed, thereby endangering the environment. It is respectfully submitted that the present invention is the only method or system which actually provides a realistically workable solution to this longstanding problem. Therefore, Applicant describes a practical application that produces a “useful, concrete, and tangible result.”

Safe Harbor - Manipulation of Data Representing Physical Objects or Activities (Pre-Computer Process Activity) MPEP 2106 (IV) (B) (2)(I)

A “statutory process is one that requires the measurement of physical objects or activities to be transformed outside the computer into computer data.”

In presently amended claim 1, the physical presence or absence of physical objects, namely service personnel, is electronically determined or measured to be present or absent outside the computer. As per claim 1, this measurement of physical objects or activity is then transformed outside the computer into a suitable data format at the site of the wastewater treatment system, thereby providing pre-computer process activity as per the safe harbor requirements. Accordingly, claim 1 and claims dependent thereto are *per se* statutory for the reasons accepted by the United States Patent Office in MPEP 2106 (IV) (B) (2)(I).

Likewise, steps such as those described in claim 75 and claims dependent thereto of permanently mounting one or more electronic sensors proximal to each of said plurality of environmental equipment systems, electronically detecting physical phenomena related to servicing said plurality of environment equipments system with said one or more electronic sensors so as to

electronically transform said physical phenomena related to servicing of said plurality of environmental equipment systems into digital data related to timely servicing of said plurality of environmental equipment systems, fall squarely into the same safe harbor stated in MPEP 2106 (IV) (B) (2)(I).

Therefore, these claims are *per se* statutory as stated in MPEP 2106 (IV) (B) (2) (I) because the method steps of the amended claims fall squarely into the safe harbor provisions as set forth in MPEP 2106 (IV) (B) (2)(I). Applicant respectfully submits that the rejection is traversed.

Claim Rejections - 35 U.S.C. § 102

Claims 20, 22, 24, 25, 27-30, 34, 39-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Carmody (US 2002/0143596).

Applicant respectfully submits that Carmody does not disclose an electronic monitor positioned at each of the environmental equipments systems as per independent claim 20. Carmody does not disclose an electronic connection from each of the plurality of environmental equipment systems for receiving digital information detected by an electronic sensor of physical phenomena as per independent claim 27. Carmody does not disclose electronically generating data utilizing electronic sensor equipment at each of the plurality of environmental equipment systems as per independent claim 39. Applicant respectfully submits that Carmody provides no direct electrical connection with the environmental equipment system itself at all and no electronic sensors whatsoever, e.g., Applicant's claim 27. Carmody is purely a computerized form handling system that is asserted by Carmody to streamline filling out forms.

The Examiner cites paragraph [0072] for electronic monitors physically positioned at each of the environmental equipment systems as per claim 20, or electronic sensors as per claim 27, and electronic sensor equipment as per claim 39. Applicant respectfully submits there are no electronic sensors described in Carmody. Instead, in paragraph [0072] Carmody plainly says that the system monitors the service history for each system contained in the systems database. The service history is produced only by service reports completed by service providers as per Carmody paragraphs [0068] and [0069]. “Upon completion of the requested service, the service provider completes a single service report describing the services performed. The service event is now complete.” Carmody does not need sensors because Carmody is purely a paperwork handling system. As described in some length in the background, Carmody is dedicated to solving paperwork problems and mainly paperwork problems for the service providers. Nowhere in the entire Carmody publication does Carmody describe electronic monitors or sensors positioned at each of the plurality of environmental equipment systems to electronically produce digital data. Likewise, Carmody does not describe a direct electronic connection from each of the plurality of environmental equipments systems to the electronic sensors as per Applicant’s claim language.

Establishing anticipation under 35 U.S.C. §102(e) requires that a single prior art reference contain every element recited in the claim in as complete detail as is contained in the claim. “The identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir 1989) See also M.P.E.P. (Manual of Patent Examining Procedure) § 2131. Further, “[A]nticipation requires that ... the prior art reference must be enabling, thus placing the alleged disclosed matter in the possession of the public.” *Akzo n.v. v U.S. Int’l Trade Commission*, 808 F.2d 1471, 1 USPQ 2d 1241, 1245 (Fed. Cir.

1986) (citing *In re Brown*, 329 F.2d 1006, 1011, 141 USPQ 245, 249 (C.C.P.A. 1964). “There must be no difference between the claimed invention and the reference disclosure...” *Scripps Clinic & Research Foundation v. Genetech Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed Cir. 1991). Because Carmody does not disclose electronic monitors at each of the plurality of environmental equipments systems and/or related electronic connections from each of the plurality of environmental equipment systems, Carmody does not anticipate Applicant’s claims 20, 22, 24, 25, 27-30, 34, 39-46. Accordingly, the rejection is respectfully traversed.

Claim Rejections - 35 U.S.C. §103

Claims 21, 32, 33, 37, 75-78, 80, 81, 85, and 87-88 stand rejected under 35 U.S.C. 103

(a) as being unpatentable over Carmody.

The Office Action admits that Carmody does not disclose a third party with third party computers whereby the third party reports to the regulatory agency as per independent claim 75 and dependent claims 21, 32, 76, and 88. The Office Action states that “because performance of said system is independent of said information received from the plurality of wastewater systems” it would be obvious to use a third party to increase the reliability of the reports. A p p l i c a n t respectfully disagrees. Contrary to the incorrect assumption made above, Carmody does not receive independent information from the plurality of wastewater systems. The service information in the Carmody systems comes only from service providers. This information is clearly not independent of biases by the service provider and cannot be considered reliable. Carmody teaches a form filling program usable by the service providers. If anything, Carmody makes it easier for service providers who wish to produce fraudulent routine inspection reports to do so more quickly and easily.

Providing a third party as proposed to be obvious by the Examiner does not improve the situation because Carmody the third party cannot verify the service provider information and therefore, cannot increase the reliability of the information provided. Unlike Applicant, Carmody does not provide data produced independently of the service provider. Moreover, Carmody does not even recognize there is a problem. There is no motivation to fix a problem that is not recognized.

Accordingly, because there is no recognition of a problem, and because there would be no benefit in providing a third party to work with Carmody, there is no motivation to utilize a third party. However, there must be a motivation to make the proposed combination to support a rejection under 35 U.S.C. 103(a). Moreover, when considering the question of whether a claim is obvious, it is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988). The Court of Appeals for the Federal Circuit makes clear that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to duplicate the claimed invention.” *In re Fritch*, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992) (quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988)). Only with Applicant’s system are there electronic sensors at the environmental equipment system which can corroborate the service providers service reports. Carmody does not teach any means for doing this and so there is no benefit whatsoever for Carmody to utilize a third party. Accordingly, the rejection is traversed with respect to the above claims.

With respect to claims 37 and 85, the Examiner admits that Carmody does not teach generating a record of when the environmental system starts initial operation for a first time or after a shutdown. The Examiner then goes on to say that a more complete record would be better and

therefore it would be obvious to include this information. Unfortunately, there is no guarantee that a selected service provider will be able to provide this information. Thus, Carmody provides no means for generating an environmental system initial operation record as claimed. This is unlike Applicant's system where an electronic connection is made to the environmental system and generation of the record can simply be programmed into the system.

The remaining claims listed above are dependent on claims which include features not shown by Carmody as discussed in the preceding section. Accordingly the rejection is respectfully traversed.

Claims 1-7, 12-18, 26, 31, 35, 38, 47, 49, 50-56, 58-63, 65-74, 79, 82, 83, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason (US 6,317,039).

Applicant respectfully submits this rejection is traversed for many reasons.

Under M.P.E.P. 2141.01, Scope and Content of the Prior art, Section III entitled "Content of the Prior Art Is Determined at the Time the Invention Was Made to Avoid Hindsight", the Examiner is required to ascertain the state of the prior art prior to the invention. Moreover, the law is clear that non-obviousness of a solution is strongly evidenced when experts in the art have tried and failed to solve long standing problems.

In the present case, for well over a decade prior to the present invention, regulators have been highly suspicious and/or aware of routine deceit by services companies whereby money paid by wastewater system owners for routine scheduled inspections is simply pocketed, and no routine inspections are made. In at least one state, the regulators went so far as to prevent use of certain

types of wastewater systems - not because the systems do not work properly as long as routine inspections are made, but because the regulators simply do not trust the safety of the environment to the honesty and reliability of unmonitored service companies. In many cases, this meant that people could not even build on their own land. This is clearly a significant, long-standing problem.

History shows there is evidence of a strong precedent for service companies to falsify routine inspection reports because it provides a quick, easy way to earn inspection money without paying the transportation and manpower costs of sending a service representative to each location. Honest service companies find it difficult to compete in this business environment and may be driven out of business in states where a high percentage of routine inspections are not made and/or are falsified. The cited references of Carmody and Thomason do not even recognize this problem and do not provide a solution thereto.

Many attempts by those of skill in the art were made to solve the problem (see the background section of Applicant's specification) but the attempts failed. After decades of numerous failed attempts by those of skill in the art to solve a deep-seated and vexing problem, Applicant's system is the first to provide a solution that successfully works.

This is the scope and content of the prior art as set out by the previously submitted Declaration of Jerry L. McKinney, the present inventor. Because the Examiner has not denied any of the above, or even commented, and because the Examiner is required to ascertain the state of the art at the time of the invention, Applicant can only assume that the Examiner agrees entirely with the above assessment of the prior art.

Given the longstanding and serious nature of the problem, and the previous attempts to solve the problem, it is abundantly clear that a workable solution was not obvious to those of skill in the

art. Accordingly, there is no reason to believe that it would have been obvious to one of skill in the art to look at Carmody, which teaches nothing about a solution to this problem, and combine Carmody with features from Thomason, who also teaches nothing about the problem per se as required to establish a *prima facie* case under 35 U.S.C. 103(a). Accordingly, Applicant respectfully submits that the rejection of claims 1-7, 12-18, 26, 31, 35, 38, 47, 49, 50-56, 58-63, 65-74, 79, 82, 83, and 86 is traversed.

There is no motivation to combine Carmody with Thomason:

As noted above, neither Carmody nor Thomason have anything whatsoever to do with the solution provided by the present invention. Accordingly, there would be no motivation at the time of the invention for one of skill in the art to combine Carmody and Thomason to provide the elements of Applicant's claimed invention as required to support a rejection under 35 U.S.C. 103(a). Neither Carmody nor Thomason teach anything about providing a solution to profiteering by service companies who ignore environmental regulations and pocket money paid by tens or hundreds of thousands of wastewater system owners for routine scheduled inspections that are never performed. Carmody simply assumes that all service providers are honest when filling out forms. In fact, Carmody provides service companies with electronic forms which allow unscrupulous service providers to more quickly and efficiently defraud regulators and wastewater system owners. Thomason provides video/voice oversight for a field technician who is at a location. However, the video/voice oversight does not provide information to enable the expert to discriminate between similar locations. Moreover, Thomason provides no oversight for the company that financially benefits if the field technician does not go to the location at all. Therefore, both Thomason and Carmody assumes the service company acts honestly. Given that neither Carmody nor Thomason

teach anything whatsoever about the problem solved by Applicant, and given that Carmody and Thomason do not even recognize the problem, there is no motivation to combine Carmody with Thomason. In order to support a rejection under 35 U.S.C. 103(a), a motivation to make the proposed combination must be shown. Because there is clearly no such motivation, Applicant respectfully submits the rejection is traversed.

Not all claim limitations are shown by Carmody and Thomason:

Claims 1 - 11, 13, 17, 21, 32, 58 - 64, 67, and 88 provide limitations related to a third party for administering functions of the system and method wherein the use of the third party improves truthfulness, completeness, and accuracy of the information. As discussed above, there is motivation to use a third party with Carmody because it does not improve the reliability of the Carmody system. The Carmody system would in effect use the fox to guard the hen house. Carmody and Thomason are not concerned with verification, or accuracy of information, or completeness of information and therefore do not discuss the features specifically recited in the above-listed claims, and do not show the claimed features, as described by these limitations. Carmody and Thomason both assume that information is accurate and complete and there is no need for verification so that no motivation exists to provide this feature. The above-discussed limitations are provided to further emphasize the fact that only Applicant's system is designed to prevent the persistent dishonesty by service companies in pocketing inspection payments, as discussed hereinbefore, and therefore also relate to improper use of data collected. Accordingly, claims 1-11, 13, 17, 21, 32, 58 - 64, 67 and 75 - 88 are allowable, not only because there is no motivation whatsoever to combine Carmody and Thomason, but also because neither Carmody nor Thomason, even in combination, shows all the elements

thereof.

Moreover, Applicant submits that Carmody does not provide the regulatory body with a means for automatically printing noncompliance notices for the system owners and/or service personnel as per claims 11 and 24. Carmody appears to provide some automatically generated forms as per paragraph [0074 and 0075] but these forms are those required for the government and simply produces red flags for the regulatory body to “investigate.” (See Carmody paragraph 0145 - or step 505 of FIG. 5) Such “investigations” are time consuming and will probably then require such notices to be manually produced, without saving the time required when the facts indicate that noncompliance has occurred, as per claims 11, 24.

Carmody does not detect personnel for initial operation of a wastewater system after installation or after a shutdown was made as per claims 37 and 38. Of course, Thomason provides nothing whatsoever about these subjects and is directed to a completely different invention unrelated to these subjects.

It is also respectfully noted that Thomason automatically stores time data only if and when the mobile field technician is on-line and transmitting to the local master technician (Col. 6, lines 5-7). Thomason further states that in most cases, no help is needed from the local master technician (Col. 1, lines 19-24). Accordingly, in most cases, no time data will be automatically recorded using the Thomason invention. Moreover, Thomason apparently is used only for training workers so that when a worker is trained, there is no longer a use for the Thomason device. However, the claim language requires the claimed equipment at all the locations. Surely, the Examiner does not believe that Thomason teaches using only untrained workers at all locations. Thomason apparently only applies to trainees and therefore provides nothing concerning use of trained experts, so it is clear for

this and other reasons discussed below that Thomason will not be used at all locations as claimed. Note that claim 75 requires permanently installed sensors which are not shown by the TV equipment truck of Thomason.

Applicant's claims 1 calls for electronically storing time data...at each of the plurality of wastewater systems. Clearly, for the above reasons, Thomason does not perform or even suggest this step. The Examiner agrees that Carmody does not teach detecting a physical presence at a wastewater system and does not teach any need whatsoever to do so. Neither Carmody nor Thomason clearly and particularly show a step of automatically storing time data or otherwise producing data by sensors at each of the plurality of wastewater locations as required to support a rejection under 35 U.S.C. 103(a) as per claims 1-19, 27-38, and 49-74.

Analyzing Thomason in even more detail, and even assuming the Thomason system was used at each of the millions of wastewater locations as would be required to maintain a rejection, it would not be possible for the local master technician to know whether the personnel are at a particular location. The local master technician cannot tell simply by looking through a camera the location of the mobile field technician. Most wastewater plants look very similar. The local master technician's job is not to determine what location the personnel are at. Thomason does not recognize this problem and does not address this problem. Nor is this problem recognized by Carmody. As noted above, in most cases, the mobile field technician will not even transmit because he will not need assistance (See Thomason Col. 1, lines 19-24). Moreover, there is no suggestion by Thomason that the field technician will go to the significant difficulty of setting up all his equipment at each location. Thomason does not require that seasoned field technicians use the system at all. Surely, the Examiner is not maintaining that only trainee service technicians are used at all locations to

satisfy the claim language.

As for physical presence at the location, this is at the whim of the Thomason field technician. If a service personnel does not show up at a location as required, then clearly Thomason will not be filming or transmitting any data from that location. The service personnel may or may not have been at the location but there is no way, vis-a-vis Thomason, to verify the absence of the service technician.

The bottom line is that even the order to send the Thomason field technician to a location whereby costs are incurred by a service company is at the complete discretion and control of the service company and/or the master technician. Due to the incredible costs of Thomason, the service provider would be highly motivated to cheat even more than presently so the proposed modification could never work to solve the problem. There is no oversight which would prompt the service company to send the service personnel to each location as required by the regulations and as paid for by the site owner. Under either Thomason and Carmody, the service company may simply collect fees for routine inspections without ever sending a service person to the location, thus saving both manpower and fuel costs. Even assuming there were a motivation to combine Carmody and Thomason, which Applicant strongly asserts there is not, in order to support a rejection under 35 U.S.C. 103(a) all the claim limitations must be taught or suggested by the prior art. The showing must be clear and particular. See, e.g., *C.R. Bard*, 157 F.3d at 1352, 48 USPQ2s at 1232. See M.P.E.P. 2143.03.

Thomason is non-analogous art:

The problem solved by Thomason is not within the field of endeavor of either Applicant or

Carmody, and is not reasonably pertinent to solving problems of concern to Applicant as required to establish as *prima facie* case of obviousness. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979). Thomason is simply a training system to train prospective service personnel. One of skill in the art would not reasonably be expected to look to Thomason for a low-cost solution to prevent fraud related to managing thousands or millions of wastewater sites. As discussed above, Thomason will not even be used unless a trainee is involved, and even then, only if the trainee requests help will any video be transmitted. Moreover, the master technician cannot possibly be expected to visually memorize each location so as to verify the presence of the trainee service personnel at each location. Furthermore, a solution is needed that, for practical purposes, is less than a few dollars a month to operate for each location whereas Thomason appears to require the cost of a small movie production at each location. For purposes of solving the problem, Thomason is prohibitively expensive both to manufacture and to operate at millions of wastewater sites, does not supply a solution anyway, and does not relate to oversight of service companies themselves who have for years collected money but did not actually perform routine inspections.

Accordingly, the rejection based on the combination of Carmody and Thomason is respectfully traversed.

Dependent claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Jurca (US 4,959,253).

Jurca discloses a system that records the pattern of use of forklifts. Jurca is non-analogous art that is in no way intended to solve the same problems as addressed by Applicant - namely the problem of tens of thousands of wastewater treatment systems to be regulated by a regulatory agency.

Neither Carmody, Thomason, nor Jurca disclose anything to do with possibility of fraud by service personnel when working or not working at the different wastewater stations. Although Carmody and Thomason are already disparate applications with no motivation for combination and little in common, Jurca comes from yet a different field of endeavor than either of these. Applicant respectfully submits that without previous knowledge of Applicant's invention, it is inconceivable that one of skill in the art would visualize Applicant's invention even after carefully reviewing the art cited by the Examiner. When considering the question of whether a claim is obvious, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fine*, 837, F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) The Court of Appeals for the Federal Circuit makes clear that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to duplicate the claimed invention." *In re Fritch*, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992). Clearly the proposed modification is an example of using hindsight with Applicant's claim as a shopping list to pick and choose components in random fashion. Accordingly, the rejection is respectfully traversed.

Dependent claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Witts et al. (US 4,401,994).

As in the rejection directly above, it is again proposed that it would be obvious to one of skill in the art to combine three disparate patents. Witt discloses a highly complicated device completely unsuited for Applicant's intended use at tens of thousands of locations. As discussed above, this is clearly another example of hindsight reasoning using Applicant's claim as a template for piecing

together otherwise relatively random documents. Because hindsight reasoning is strictly impermissible, Applicant respectfully submits that the rejection is traversed.

Dependent claims 23, 36, 48, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Kahleck et al. (US 5, 673,190).

Kahleck relates to office machine management system for controlling printers and photocopy machines. Like Carmody, Kahleck does not recognize the problem to which Applicant's invention is directed. Kahleck apparently sends a signal when a service contract is due but has no functionality to determine whether the contract has been renewed or not. Therefore, Kahleck has no capability to send a notice if the contract has not been renewed as per claims 23, 36, and 48. Moreover, Kahleck is so far removed from the field of endeavor that it is clearly non-analogous art which would not normally be consulted by one of skill in the relevant art. Moreover, the proposed combination appears to be one of hindsight reasoning and without even knowing what the problem is, one of skill in the art would be in the dark as to what to do with the cited references. In any case, Kahleck does not disclose the claim limitations. Accordingly, Applicant submits that the rejection is traversed.

Dependent claim 84

As discussed hereinbefore, the Examiner proposes it would be obvious to utilize a third party to enhance reliability of the systems report. This ignores that Carmody did not recognize a need for this. Carmody not only does not recognize the need, but relies exclusively on the service provider to provide the information in question. A third party in conjunction with Carmody would be absolutely useless because the third party has no way to determine if the information is accurate or

not. Accordingly, there is no reason to believe that it would be obvious to provide a third party with Carmody as taught by Applicant because no benefit would accrue. The proposal would result in increased cost, time, and effort with no benefit. It is not obvious to modify an invention to increase the costs while obtaining no benefit from the modification.

Dependent claims 10-11, 19, 57 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmody in view of Thomason and further in view of Kahleck.

As noted above, Kahleck apparently sends a signal when a service contract is due but has no functionality to determine whether the contract has been renewed or not as per claim 10. Therefore, Kahleck teaches no capability to send a notice if the contract has not been renewed as per claims 11, 19, 57 and 64. In any case Kahleck is non-analogous art which is improperly used in a rejection under 35 U.S.C. 103(a). As well, no motivation is shown for combining such disparate references, none of which even recognize the problem solved by Applicant.

Summary:

Carmody is essentially a paperwork handling system which assumes that all paperwork prepared by a service company is accurate. Carmody has no direct electrical connection to the actual wastewater treatment sites to provide independent electronic sensor data. Instead, Carmody relies on the service provider as the one and only source for all service information and confirmation of service performed. Carmody clearly does not provide independent verification of the information in the paperwork prepared by the service personnel. Thomason is a training system not intended to be associated with automatically filing forms and is not at all concerned with oversight of the service

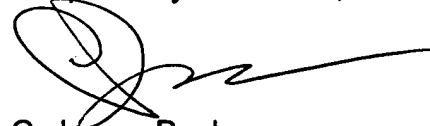
company itself. Thomason is non-analogous art directed to a system completely unsuited to solve the problems addressed by Applicant. Clearly, there was no motivation at the time of the invention to combine Carmody with Thomason.

Moreover, the state of the art at the time of the invention indicates a long standing problem which had never been solved prior to Applicant - facts that support Applicant's contention that it was not obvious to one of skill in the art at the time of the invention to randomly combine Carmody and Thomason, neither of which appear to recognize the problem.

Furthermore, it is respectfully submitted that the unrelated patents of Carmody, Thomason, Jurca, Witts, and Kahleck are deficient and do not show, even in combination, the claim limitations of claims 1-88.

For any of the above-listed reasons, it is respectfully submitted that the rejection to claims 1-88 is respectfully traversed and that claims 1-88 are now allowable. Accordingly, Applicant respectfully proposes that the application now stands in condition for allowance and earnestly requests that a Notice of Allowance be issued forthwith.

Respectfully submitted,



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